

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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In Reply To:

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Instruction Memorandum No. MT-2006-038

Expires: 9/30/07

To: Field Managers

From: State Director

Subject: Processing Rights-of-Way (ROW) Applications in Conjunction with Oil and Gas Lease Activities

Program Area: Oil and Gas Operations; Lands and Realty (energy-related ROWs)

Purpose: This instruction memorandum (IM) is being prepared in response to questions raised from the Field Offices for more detailed direction for determining when a ROW is necessary versus an Application for Permit to Drill (APD) or Sundry Notice (SN) for oil and gas exploration and production activities. This IM supplements Washington Office (WO) IM No. 87-349, dated March 19, 1987 (Attachment 1), and the Bureau of Land Management (BLM) 2801 Manual, Rights-of-Way Management, Release 2-283, dated 2/12/96. It provides more specific guidance and clarification for processing ROW applications in conjunction with oil and gas activities.

Policy/Action: Field Offices are directed to apply the existing guidance included in the BLM 2801 Manual, Rights-of-Way Management, Release 2-283, dated 2/12/96, and supplemented by this IM.

Determining if Facilities Require ROW Grants or Should be Authorized with an APD or SN

Recent actions in areas with mixed ownership and oil and gas lease activity have raised some questions about the proper authorizations to use under many different surface and mineral ownership situations. This IM includes existing guidance, supplemented with more specific criteria to address the situations encountered by the Field Offices.

In all cases, determining when a lease authorization or ROW is appropriate must consider the following criteria. The overriding factor lies with the lease rights granted by the federal lease. The lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in the leasehold subject to stipulations and other required restrictions and reasonable measures as codified in 43 CFR § 3101.1-2. Once federal leases are committed to a communitization agreement (CA) or unit, the entire CA and unit, excluding uncommitted tracts, are treated as a single lease for the purposes of surface use authorizations (see 43 CFR § 3105.2-2, 43 CFR § 3160.0-5(f),

BLM 2801 Manual, Rights-of-Way Management, Release 2-283, dated 2/12/96 (Supersedes 2-263), Section 2801.32C1g(1), and the June 19, 1980 Solicitor's Opinion M-36921, Rights-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds).

Existing guidance provides a general framework to determine when an oil and gas exploration and production related ROW is necessary. Existing guidance established by WO IM No. 87-349, dated March 19, 1987 (Attachment 1) is found in the BLM 2801 Manual, Rights-of-Way Management, Release 2-266 dated 10/11/89. Upon receipt of an NOS, APD, or SN, the authorized officer shall determine whether a ROW is needed.

1. It is BLM policy that oil and gas facilities shall require a ROW for:

A. Facilities or portions thereof which lie outside of a lease or unit boundary;

B. That portion of the facility which occurs downstream from the sales (custody transfer) point (whether on or off lease) or;

C. A facility (other than a production facility) or portion thereof which is owned by any party other than the lessee or designated operator. Where the owner of a facility other than the lessee or designated operator informs the authorized officer they are considered an entity of the lease holder, entitled to lease rights, the authorized officer shall:

(i) Require the applicant/operator to submit corporate documentation supporting their claim; and

(ii) Review and, if necessary, forward the documentation and the claim to the appropriate Solicitors Office for a determination if the applicant/operator is a third party requiring a ROW grant.

D. Actions proposed by a party that is not the oil and gas lessee/operator; or located on a separate lease from the lease the action is benefiting, even if both leases are owned/operated by the same party.

E. Wells and facilities in reverse split estate situations (federal surface/fee minerals).

2. It is BLM policy that oil and gas facilities should be authorized with an APD or SN for:

A. Actions proposed by an oil and gas lessee/operator and;

(i) Located on the same lease the action is benefiting; or

(ii) Located on lands overlying federal minerals within a CA or unit that are formally part of the CA or unit; and the action is proposed to benefit the CA or unit. This criterion would also apply if the benefiting well is a private well within the CA or unit.

3. If the lessee/operator chooses to use a ROW in certain circumstances for convenience or recordkeeping purposes, there is no requirement to force the use of an APD or SN unless the specific action absolutely requires the use of an APD or SN (e.g., drilling a well to develop federal minerals).

4. A surface use authorization (either ROW or APD or SN) is required for new use of existing roads and trails or placement of a new pipeline or power line in an existing ROW corridor. This practice also applies if a different lessee/operator already has an existing surface use authorization covering the same section of road or trail. No ROW or APD or SN authorization is necessary for portions of the access route that use a designated county road or state highway.

Attachment 2 provides numerous examples to help illustrate the practical application of these criteria under different surface and mineral ownership situations. For the purposes of illustrating different surface, mineral, and lease ownership scenarios, Attachment 2 assumes all facilities, including power lines, are owned by the lessee or designated operator. It should be noted that power lines are often owned by other parties and this ownership situation requires authorization with a ROW as detailed under 1.C. of this IM.

Procedures to Enhance Processing and Environmental Analysis of Oil and Gas Exploration and Production Related ROW and APDs or SNs

This IM also includes direction from the existing guidance in the BLM 2801 Manual, Rights Of Way Management, Release 2-263, dated 03/08/89 and Release 2-266, dated 10/11/89. It is supplemented with more specific criteria for procedures to enhance processing and environmental analysis when an oil and gas exploration and production related ROW is necessary in combination with permitting under oil and gas lease rights (i.e., APD or SN).

The intent of this guidance is to reduce required field work, introduce National Environmental Policy Act of 1969 (NEPA) analysis efficiencies, establish consistency between onlease and offlease surface management stipulations/conditions of approval and best management practices, maintain facilities under correct authorizations until their use has terminated, and ensure proper land status plat notations.

To achieve this goal, the following management objectives should govern the oil and gas related ROW program:

1. Use one Bureau representative to conduct the onsite field inspection for the entire project proposal, both onlease and offlease, except when the situation dictates otherwise.
2. Complete a single NEPA analysis with documentation for the entire project proposal, both on-lease and off-lease.
3. Develop mitigation measures (stipulations/conditions of approval and best management practices) for the entire project proposal and avoid duplication and inconsistent requirements.

4. Assure that the individuals handling oil and gas related ROWs are informed of all actions that could result in the need for a ROW or an adjustment to an existing ROW. This may include unit contractions, partial lease relinquishments, and lease terminations. The Montana State Office Fluids Adjudication Section provides notice of these actions to the applicable oil and gas management units in the Great Falls Oil and Gas Field Station, Miles City Field Office, and North Dakota Field Office. These Field Office oil and gas management units must develop a process to effectively notify respective staff responsible for processing ROWs of any actions that may require new ROWs or adjustments to existing ROWs.

Bond Obligations

A determination needs to be completed during the review of proposals to ensure an adequate bond is in place for any actions authorized with an APD or SN according to 43 CFR § 3104.1. Similar determinations are also necessary for ROW authorizations according to 43 CFR § 2805.12 and the BLM 2801 Manual, Rights of Way Management, Release 2-283, dated 2/12/96 (Supersedes 2-263), Section 2801.41D.

Timeframe: Implement immediately.

Budget Impact: Implementation of this policy is expected to provide some savings in staff time and budget associated with approval of ROW applications in conjunction with oil and gas activities.

Background: The existing guidance has been in place since 1987. The WO formally affirmed this guidance in 1996 and directed the Field Offices to incorporate the provisions under BLM Manual 2801.32C. See WO IM No. 96-106, dated May 16, 1996 (Attachment 3).

Manual/Handbook Sections Affected: BLM 2801 Manual, Rights-of-Way Management, Release 2-283, dated 2/12/96, Section 2801.32.

Coordination: The objectives contained herein for processing efficiencies and identification of appropriate use authorizations may require closer coordination between realty and environmental/surface protection personnel. Coordination occurred among the Branch of Fluid Minerals, the Branch of Land Resources, and the affected Field Offices.

Contact: Please direct any questions related to APD and SN processing, including bonding requirements to Jim Albano at (406) 896-5111 or Will Lambert at (406) 896-5328. Also contact Craig Haynes at (406) 896-5040 if there are any questions related to ROW processing, including bonding requirements.

Signed by: Howard A. Lemm

Authenticated by: Kathy Ray (MT-922)

3 Attachments

- 1-WO IM No. 87-349, dated March 19, 1987 (17 pp)
- 2-Surface Use Authorization Scenarios (8 pp)
- 3-WO IM No. 96-106, dated May 16, 1996 (1 p)

Distribution

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